

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

File No. 1:07-CV-739-JAB-WWD

DAVID F. EVANS, COLLIN FINNERTY,	)	
and READE SELIGMANN,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	<b>DEFENDANT BENJAMIN</b>
	)	<b>HIMAN'S MOTION TO DISMISS</b>
THE CITY OF DURHAM, NORTH	)	<b>PLAINTIFFS' SECOND</b>
CAROLINA, MICHAEL B. NIFONG,	)	<b>AMENDED COMPLAINT</b>
MARK GOTTLIEB, BENJAMIN HIMAN,	)	
DAVID ADDISON, LINWOOD WILSON,	)	
PATRICK BAKER, STEVEN CHALMERS,	)	
BEVERLY COUNCIL, RONALD HODGE,	)	
JEFF LAMB, MICHAEL RIPBERGER,	)	
LEE RUSS, DNA SECURITY, INC.,	)	
RICHARD CLARK, and BRIAN MEEHAN,	)	
	)	
Defendants.	)	

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Defendant Benjamin Himan (öInvestigator Himanö), through his undersigned attorneys, moves pursuant to Fed. R. Civ. P. 12(b)(6) for an order dismissing this action in its entirety as to this Defendant upon the grounds that the Second Amended Complaint fails to state a claim upon which relief may be granted and, in the alternative, that all claims asserted against Investigator Himan are barred by the doctrines of qualified and public officer immunity.

In support of this motion, and pursuant to this Court's February 16, 2010 Order, document #115, Investigator Himan hereby incorporates by reference the following previous arguments and authorities in this case:

Defendant Benjamin Himan's Motion to Dismiss, filed January 15, 2008, document #36;

Defendant Benjamin Himan's Brief in Support of Motion to Dismiss, filed January 15, 2008, document #37;

Defendants Mark Gottlieb and Benjamin Himan's Joint Reply Memorandum in Support of Motion to Dismiss, document #61;

Defendants Mark Gottlieb, Benjamin Himan and the City of Durham's Supplemental Brief in Support of Motions to Dismiss, document #100; and

Suggestion of Subsequently Decided Authority, document #114.

WHEREFORE, Defendant Benjamin Himan respectfully prays the Court that:

1. The Action against him be dismissed;
2. Judgment be entered for Defendant Benjamin Himan on all claims against him;
3. Plaintiffs have and recover nothing from Defendant Benjamin Himan; and
4. Defendant Benjamin Himan have such other and further relief as the Court shall deem just and proper.

This the 10th day of March, 2010.

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## CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the foregoing Defendant Benjamin Himan's Motion to Dismiss Plaintiff's Second Amended Complaint was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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This the 10th day of March, 2010.

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